

## 16D C.J.S. Constitutional Law § 2393

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### Constitutional Law

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### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXII. Particular Applications of Due Process Guaranty

##### Q. Other Particular Matters

###### 1. In General

## § 2393. Regulation of or relating to person's place of residence

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  4036

**The right to due process protects the right to reside where one chooses and subjects residency restrictions or requirements to constitutional scrutiny under standards varying from a rational basis to heightened scrutiny depending on the nature of the restriction or requirement.**

The right to travel under the substantive component of due process encompasses the right to change residences within a state<sup>1</sup> and the right to take up residence in the state of a citizen's choice,<sup>2</sup> providing a due process basis for invalidating durational residency requirements when not supported by sufficient legitimate state interests.<sup>3</sup>

A strict level of scrutiny for a compelling state interest applies to the right to travel, as applied to durational residency requirements,<sup>4</sup> while an intermediate level of scrutiny for a rational basis applies when the right to intrastate travel and a choice of residency is concerned, permitting state action that infringes on the right to localized intrastate movement only if it is narrowly tailored to serve significant government interests, not necessarily compelling ones.<sup>5</sup> For purposes of the due process protection of the interstate right to travel, a impermissible durational residency requirement, subject to strict scrutiny, is a condition on a public benefit when

the availability or level of benefit is based on the length of time that the individual has lived within a political entity, while a permissible bona fide residency requirement, subject to a rational basis test for a legitimate government interest only requires that individual live within a given political entity without regard to the length of time that individual has resided there.<sup>6</sup>

A candidate for city firefighter position states a claim under substantive component due process that the right to intrastate travel is violated by denial of consideration for appointment pursuant to city ordinance conditioning an appointment on city residency for at least 12 months prior, alleging that the ordinance is not narrowly tailored to achieve legitimate government interest in ensuring the safety of city residents by employing firefighters who were familiar with the community and have knowledge of local geography, when the firefighter has served as a city firefighter for 25 years before.<sup>7</sup>

A statute that prohibits sex offenders from living within 2,000 feet of an elementary or secondary school or child care facility does not violate the offender's substantive due process rights regarding freedom of choice in residence, under the rational basis standard, since there is a reasonable fit between the government interest in preventing recidivism by sex offenders and the means utilized to advance that interest.<sup>8</sup>

A statute defining state residency for purposes of obtaining a hunting license is not unconstitutionally vague because other statutes, such as a statute governing general residency requirements, or those governing registration, voting, seeking election, bidding on public contracts, or registering motor vehicle fleets define residency differently.<sup>9</sup>

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#### Footnotes

- 1 U.S.—McCool v. City of Philadelphia, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
- 2 U.S.—Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981); North Carolina ex rel. Kasler v. Howard, 323 F. Supp. 2d 675 (W.D. N.C. 2003), aff'd, 78 Fed. Appx. 231 (4th Cir. 2003).
- 3 U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).
- 4 U.S.—Fayerweather v. Town of Narragansett Housing Authority, 848 F. Supp. 19 (D.R.I. 1994).
- 5 U.S.—McCool v. City of Philadelphia, 494 F. Supp. 2d 307 (E.D. Pa. 2007).  
Iowa—State v. Seering, 701 N.W.2d 655 (Iowa 2005).
- 6 U.S.—Fayerweather v. Town of Narragansett Housing Authority, 848 F. Supp. 19 (D.R.I. 1994).
- 7 U.S.—McCool v. City of Philadelphia, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
- 8 Iowa—State v. Seering, 701 N.W.2d 655 (Iowa 2005).
- 9 Mont.—State v. Britton, 2001 MT 141, 306 Mont. 24, 30 P.3d 337 (2001).